

A **MOHD RAFIZI RAMLI & ANOR v. PP**
HIGH COURT MALAYA, SHAH ALAM
ZULKIFLI BAKAR J
[CRIMINAL APPEAL NO: 42(ORS)-3-06-2015]
5 APRIL 2017

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***CIVIL PROCEDURE:** Judgment – Finality – Sessions Court – Application to refer constitutional questions from Sessions Court to High Court – Whether Sessions Court Judge had discretion to allow or dismiss application – Whether there was any constitutional issue in the case – Whether constitutionality issue could be brought directly to High Court for consideration of whether case ought to be transmitted as special case to Federal Court – Whether prospect of application to succeed in referral to High Court high – Whether decision of Sessions Court Judge appealable – Whether there was finality in decision – Courts of Judicature Act 1964, s. 30*

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***BANKING:** Banking and Financial Institutions Act 1989 – Section 87(2) – Investigation – Powers of investigation officer to examine – Right to silence – Whether absolute and applicable to interrogation process*

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The appellants appealed against the decision of the Sessions Court Judge ('the SCJ') under s. 30 of the Courts of Judicature Act 1964 ('CJA') in dismissing their application to refer the following questions from the Sessions Court to the High Court: (i) whether s. 87(2) of the Banking and Financial Institutions Act 1989 ('BAFIA') which provided that a person to whom an order by the investigating officer ('the IO') shall not refuse to answer any question that is put to him, is conflicting with the constitutional principle that the accused has a right to silence; (ii) whether s. 272(f) and (l) of Financial Services Act 2013 ('FSA') and s. 30(1) of the Interpretation Acts 1948 and 1967 ('IA') enable the prosecution against the appellants under the BAFIA to be proceeded although the BAFIA had been repealed, was in conflict with art. 5 of the Federal Constitution ('FC'); and (iii) whether s. 97(1) of the BAFIA is unconstitutional since there is no element of 'intention' laid down expressly in order to prove such offence of disclosure without permission. The SCJ held that (i) he had the discretion to either allow or dismiss the application; (ii) the appellants could directly bring the constitutionality issue for the High Court to consider whether there was a question of constitutional issue on the matters in order to transmit it as a special case to the Federal Court; (iii) the appellants' trial had been inordinately delayed for almost three years; and (iv) the prospect of the appellants' application to succeed in its referral to the High Court was low. The respondent raised a preliminary objection that the appellants were incompetent to file this appeal as the SCJ had no mandatory obligation to transmit the case to the High Court when faced with any question as to the effect of any provision of the FC since the trial judge had a discretion to determine if there was any question arising as

to the effect of the FC under s. 30 of the CJA and in this case, the trial judge decided there was no such effect arising and hence refused the application by the appellants.

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Held (dismissing appeal):

- (1) The decision of the SCJ was not appealable. The court had taken into account the 'decision' to exclude the ruling of judgment or order made in the course of hearing which does not finally dispose the rights of the parties as the aggrieved parties could still file an appeal after the conclusion of the trial. The appellants filed the formal application dealing with the issues of the charge against the appellants which they claimed to be void and unconstitutional which would affect the rights of the parties at the court when the court decides in favour of the appellants whereby it would have a finality effect and no trial could be commenced against the appellants. There was a finality in the decision. The preliminary objection was thus dismissed. (para 4)
- (2) Section 87 of the BAFIA expressly states that the power of the IO to examine the person does not violate the privilege against self-incrimination. This provision is necessary for the purpose of investigations. The suspect who had unreasonably remained silent when being interrogated would have impeded the investigation. With this provision, the IO is ensured the opportunity to investigate into the case and the suspect would be well-informed with the results of the investigation. As to the issue of the privilege against self-incrimination raised by the appellant, there was no merit in this argument because it could still be challenged in the course of the trial had there been any abuse of power by the investigating authority or any non-compliance of the law. The right to silence is not absolute and does not apply to the interrogation process since the rationale is that the suspect is bound to disclose information to the police after his arrest as this could be used in his defence later at the trial. It is also to avoid any new disclosure of evidence which would, at an earliest opportunity, allow the police to conduct investigation to determine its truth. (paras 11 & 12)
- (3) The new FSA should not affect the previous operation of the BAFIA and hence, it is in line with what has been stated under s. 272(1) of the FSA which is also provided for under s. 30(1) of the IA. The FSA was thus not applicable to this case. (para 13)
- (4) Section 97(1) of the BAFIA is based on strict liability principle as the duty to secrecy is an act concerning public interest as well as regulations to control behaviour. There would not have to be any need for the intention element to be expressly provided as argued by the appellants. (para 14)

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- A (5) There was no merit in this appeal. The issues raised were not befitting to be treated as a special case to be transmitted to the Federal Court. The decision of the SCJ was affirmed. In order to avoid inordinate delay, this appeal was dismissed and the matter was remitted back to the Sessions Court for expeditious disposal. (paras 15 & 16)

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Case(s) referred to:*Ahmad Zubair Hj Murshid v. PP [2014] 9 CLJ 289 FC (refd)**Bank Pertanian Malaysia Bhd v. Koperasi Permodalan Melayu Negeri Johor [2015] 9 CLJ 1 FC (refd)**Dato' Sreesanthan Eliathamby lwn. PP & Kes Yang Lain [2014] 4 CLJ 432 HC (foll)*

- C *Gammon (Hong Kong) Ltd v. Attorney-General for Hong Kong [1984] 2 All ER 503 (refd)*

*Gan Boon Aun v. PP [2016] 6 CLJ 647 FC (refd)**Karpal Singh Ram Singh v. PP [2012] 5 CLJ 537 FC (refd)**Mat Shuhaimi Shafiei v. PP [2014] 5 CLJ 22 CA (refd)**Maxwell v. Murphy [1956-1957] 96 CLR 261 (refd)**PP v. Kamaruzaman Mahmud & Anor [2006] 4 CLJ 792 HC (refd)*

- D *PP v. Tanggaah [1972] 1 LNS 115 HC (refd)*

*Syed Ibrahim Syed Mohd & Ors v. Esso production Malaysia Incorporated [2004] 1 CLJ 889 CA (refd)***Legislation referred to:**

Banking and Financial Institutions Act 1989, ss. 87(2), 97(1)

- E Courts of Judicature Act 1964, ss. 3, 30, 84

Federal Constitution, arts. 5, 128(2)

Financial Services Act 2013, s. 272(f), (l)

Interpretation Acts 1948 and 1967, s. 30(1)

*For the 1st appellant - Razlan Hadri Zulkifli; M/s Gan Ho & Razlan Hadri**For the 2nd appellant - Latheefa Beebi Koya; M/s Daim & Gamany*

- F *For the respondent - Lailawati Ali; DPP*

*Reported by Najib Tamby***JUDGMENT**

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Zulkifli Bakar J:**Background**

[1] The appellants in this appeal are Mohd Rafizi bin Ramli and Johari bin Mohamad. The appellants appealed against the decision of the learned Sessions Court Judge, under s. 30 of the Courts of Judicature Act 1964 ("CJA"), in dismissing their application to refer the following questions from the Sessions Court to the High Court, contended to involve constitutionality issues:

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- I (a) Whether s. 87(2) of Banking and Financial Institutions Act 1989 ("BAFIA") which provided that a person to whom an order by the investigating officer shall not refuse to answer any question that is put to him, is conflicting with the constitutional principle that the accused has a right to silence ("first issue");

(b) Whether s. 272(f) and 272(l) of Financial Services Act 2013 and s. 30(1) of Interpretation Acts 1948 and 1967 which enable the prosecution against the appellants under BAFIA to be proceeded although BAFIA had been repealed, is in conflict with art. 5 of Federal Constitution (“second issue”); and A

(c) Whether s. 97(1) of BAFIA is unconstitutional since no element of “intention” is laid down expressly in order to prove such offence of disclosure without permission (“third issue”). B

[2] Pursuant to the aforesaid, the issue before this court for its determination is whether the Sessions Court Judge had correctly exercised his discretionary power under s. 30 of CJA to dismiss the appellants’ application for a referral of the constitutional questions to the High Court. The Sessions Court Judge decided so based on the following reasons: C

(a) The Sessions Court Judge has the discretion to either allow or dismiss the application; D

(b) The appellants can directly bring the constitutionality issue for the High Court to consider whether there is a question of constitutional issue on the matters in order transmit it as a special case to the Federal Court;

(c) The trial of the appellants’ case had been delayed inordinately for almost three years; and E

(d) In view of the Sessions Court Judge, the prospect of the appellants’ application to succeed in its referral to the High Court is low.

Preliminary Objection

[3] The respondent, at the outset of this appeal, raised a preliminary objection that the appellants were incompetent to file this appeal as the learned Sessions Court Judge has no mandatory obligation to transmit the case to the High Court when faced with any question as to the effect of any provision of the Constitution, since the trial judge had a discretion to determine if there is any question arising as to the effect of the constitution under s. 30 of the CJA and in this case the trial judge decided there was no such effect arising, and hence refused the application by the appellants. F G

[4] First and foremost, my task is to decide whether the said refusal by the learned Sessions Court Judge is appealable or otherwise: H

(a) Section 3 of CJA defines “decision” as:

judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties (emphasis added)

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- A (b) In the case of *Karpal Singh Ram Singh v. PP* [2012] 5 CLJ 537; [2012] 5 MLJ 293, the Federal Court explained the term “decision” as follows:

B [20] A scrutiny of the scope of the term ‘decision’ in s 3 of the CJA reveals that its definition does not extend to the types of ‘judgments or orders’ which can be termed as ‘interlocutory’. *In other words, if a judgment or order is not final, in the sense that it does not finally dispose of the rights of the parties in the trial, then it would not fall within the definition of the word ‘decision’ under s. 3 of the CJA, and thus not appealable ...*

C [21] A dissatisfied party is never deprived either of his right to appeal after the conclusion of a trial, in the event he feels aggrieved with the ruling made in the course of the trial, as that supposed error could be raised in the appeal proper. Again Arifin Zakaria CJ in *Dato’ Seri Anwar Ibrahim v. Public Prosecutor* opined:

D *The right of a party who is aggrieved by a ruling, after all, is not being compromised, as the party can always raise the issue during the appeal, if any, to be filed after the trial process is brought to its conclusion.* (emphasis added);

- E (c) Based on the above, this court had taken into account that “decision” to exclude the ruling or judgment or order made in the course of hearing which does not finally dispose the rights of the parties as the aggrieved parties can still file an appeal after the conclusion of the trial. In the instant case, the appellants filed the formal application dealing with the issues of the charge against the appellants which they claimed to be void and unconstitutional, which, in my view, will affect the rights of the parties at the trial when the court decides in favour of the appellants whereby it will have a finality effect and no trial could be commenced against the appellants;

F (d) In my considered view, had the appellants succeeded in their contention on questions of law, that will substantially affect the rights of the parties and become appealable issues whereby the respondent (Public Prosecutor) has the right to appeal. It is mindful that the appellants are now questioning the legal issues involving the Constitution which, the order, if made, would result in a final decision on the matter in dispute ie, the charge that infringing the Constitution could not stand against the appellants and hence there will be no charge and trial against the appellants;

- G (e) I refer to the Federal Court case of *Ahmad Zubair Hj Murshid v. PP* [2014] 9 CLJ 289; [2014] 6 MLJ 831 that explained the real meaning of “decision” which connotes the matter would be ended and cannot proceed to dispose the rights of the parties involved:

I [39] In this instant case the appellant had applied before the High Court to quash the charges and order an acquittal against him. The application was dismissed. The appellant had also applied before the sessions court for the charges to be quashed and prayed that

a discharge not amounting to acquittal to be ordered against him. The application was also dismissed. *The way we perceive it, the orders of the courts below would connote that the matter should proceed for trial as the charges preferred against the appellant still stand. Clearly the decision not to strike out the charges before the commencement of the trial as was done in this instant case does not amount to disposal of the rights of the parties. Since the order gives no final decision on the matters in dispute, it is not a decision within the definition under s. 3 of the CJA and therefore is not appealable.* (emphasis added)

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From the above precedent, it would appear that in the instant case the decision of the Sessions Court Judge is not appealable. Nevertheless, I wish to highlight herein, in the present case, there was a formal application (notice of application and affidavits) for the Sessions Court Judge to refer the questions of law to this court under s. 30 of CJA and the Sessions Court Judge dismissed the said application. The appellants are now appealing against the said decision. As far as the application is concerned, there is a finality in the decision. I therefore dismiss the preliminary objection and proceed to hear the appeal.

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Decision Of The Appeal

[5] As the court exercising appellate jurisdiction, I would have to examine whether there is a misdirection from the learned Sessions Court Judge that warrants my appellate intervention.

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[6] In this case, the learned Sessions Court Judge exercised his discretionary power under s. 30 of CJA to reject the appellants' application as there was no merit, and it would be frivolous to delay the hearing of the trial.

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[7] Therefore, it is primarily my duty to decide on the matter appealed on by the appellants and it is agreed by both counsel representing the appellants that it is not my duty to determine the issue of constitutionality of the three questions raised by the appellants before the learned Sessions Court Judge.

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[8] Be that as it may, this court cannot turn blind eyes in relation to the questions raised by the appellants whether they have the effect on the provisions of the Constitution which form a special case under s. 84 of the CJA, to be referred to the Federal Court or otherwise under the Rules of the Federal Court ("RFC 1995") (*Gan Boon Aun v. PP* [2016] 6 CLJ 647).

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[9] This court is also mindful of the decision by the Federal Court in *Gan Boon Aun v. PP* (*supra*) where it was held, under art. 128(2) of the Federal Constitution that only the Federal Court has the jurisdiction to determine the question as to the effect of any provision of the Constitution. The High Court is thus not empowered to decide on the constitutionality issue of the questions.

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- A [10] The Sessions Court Judge had dismissed the application by the appellants and in the grounds of judgment had given his reasons and on that score this court has to consider whether the said decision merits this court's intervention. I do not find any reason to interfere with the decision of the learned Sessions Court Judge as he had judiciously exercised his discretion in doing so. I had taken the liberty to state herein my other reasons for dismissing this appeal and did not by any means determine the question of any provision of the Constitution. I found the questions raised do not form a special case to be referred to this Federal Court.
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First Issue

- C [11] On the first issue, I found the provision of s. 87(2) of BAFIA, which expressly states that the power of the investigating officer to examine the person does not violate the privilege against self-incrimination, a necessary provision for the purpose of investigations. The suspect who had unreasonably remained silence when being interrogated would have impeded the investigation. With this provision, it ensures the investigating officer to have the opportunity to investigate into the case and the suspect will be well-informed with the results of the investigation. As to the issue of the privilege against self-incrimination raised by the appellant, this court found no merit in this argument because it could still be challenged in the course of the trial had there been any abuse of power by the investigating authority or any non-compliance of the law.
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- (a) In my opinion, it has been too easy for one to hide behind the right to silence and lurch a surprise during the trial. It should be at the notion of fairness of due process, the suspect or accused should only rely on the defence which has been his stance since the time of the police questioning because black letters of the law had stated so. Therefore, I found there is no merit in this argument.
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- [12] I found support in the above finding wherein, Kamardin Hashim J (as he then was) in his judgment in the case of *Dato' Sreesanthan Eliathamby lwn. PP & Kes Yang Lain* [2014] 4 CLJ 432, had said:
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[78] Dalam kes *R v. S (F) and A (S)* [2009] 1 Cr App R 18 250 juga telah **memutuskan bahawa hak untuk berdiam diri dan hak perlindungan dari menjerat diri bukanlah satu hak yang mutlak**. Mahkamah Rayuan melalui Lord Judge CJ telah membuat keputusan seperti berikut di ms. 256:

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- I It is well understood that the principle is subject to numerous statutory exceptions which limit, amend, or abrogate the privilege in specified circumstances. Thus, notwithstanding the privilege, individuals may sometimes be required to answer questions or provide information or documents which may incriminate them. As Lord Mustill explained in *R. v. Director of*

Serious Fraud Office Ex p. Smith (1992) 95 Cr. App. R. 191; [1993] A.C. 1, in relation to the general immunity against answering incriminating questions at 199 and 31D-E:

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few would dispute that some curtailment of the liberty is indispensable to the stability of society; and indeed in the United Kingdom today our lives are permeated by enforceable duties to provide information on demand ...

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[79] Tuan TPR yang bijaksana telah merujuk kepada beberapa nas termasuklah *Koon Wing Yee v. The Securities & Futures Commission* (HCAL No. 7 of 2007), *R v. Hertfordshire County Council, Ex p Green Environmental Industries Ltd and Another* [2000] 1 All ER 773, *Jalloh v. Germany* [2007] 44 EHRR 32, *O'Halloran & Francis v. United Kingdom* [2008] 46 EHRR 21 dan *R v. K(A)* [2009] EWCA Crim 1640 bagi menguatkan hujahan beliau bahawa hak untuk berdiam diri dan hak perlindungan dari menjerat diri bukanlah satu yang mutlak. Hak itu boleh dibataskan oleh statut walaupun hak-hak itu wujud secara tersurat. Hak-hak tersebut sebaliknya tidak tersurat di bawah Perlembagaan Persekutuan. *Hak-hak itu jika dinafikan sekalipun tidak menafikan hak pemohon untuk mendapatkan satu perbicaraan yang adil seperti dijamin oleh per. 5(1) dan 8(1) Perlembagaan Persekutuan. Mahkamah ini bersetuju dengan hujahan tersebut dan ingin mengungkapkan bahawa kepentingan awam hendaklah mengatasi segalanya, termasuklah hak dan kepentingan persendirian.*

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[80] Setelah menimbang hujahan kedua belah pihak dan meneliti semua nas-nas yang dirujuk, mahkamah ini berpandangan bahawa s. 134 SCA tidak bercanggah dengan hak untuk berdiam diri dan hak untuk mendapat perlindungan daripada menjerat diri sendiri. Seksyen 134 SCA tidak langsung bercanggah dengan per. 5(1) dan 8(1) Perlembagaan Persekutuan seperti mana didakwa oleh pemohon dan peguambela terpelajar. Kegusaran yang disuarakan oleh pemohon terhadap kemungkinan salah guna kuasa adalah sesuatu yang tersasar dan tiada asas yang kukuh untuk menyokong. Selain itu, terdapat beberapa remedi di bawah undang-undang yang sedia ada untuk mencabar sebarang kemungkinan berlakunya salah laku atau salah guna kuasa. Lagi pun hak untuk berdiam diri dan perlindungan dari menjerat diri bukanlah sebahagian daripada prinsip keadilan asasi. Ianya adalah berkaitan dengan isu keterangan yang hanya terpakai semasa perbicaraan di mahkamah. (emphasis added)

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- (a) Pursuant to the above, it is in my considered opinion, the right to silence does not apply to the interrogation process since the rationale is that the suspect is bound to disclose information to the police after his arrest as this could be used in his defence later at the trial. It is also to avoid any new disclosure of evidence which could at the earliest opportunity allow the police to conduct investigation to determine its truth. If it is true, the suspect may not be charged at all. In short, the right to silence during interrogation by the police is not absolute.

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A Second Issue

[13] Section 272 (f) of Financial Services Act 2013 provides: “(f) nothing shall affect any person’s liability to be investigated, prosecuted or punished for offences committed under the repealed Acts before the appointed date;”, and para. (l) of s. 272 of the Financial Services Act 2013, provides: “(l) any right, benefit, privilege, obligation or liability acquired, accrued or incurred under the repealed Acts, shall continue to remain in force under this Act”.

- (a) I do not see any conflicting issue where there is a clear provision by para. (l), which says the Financial Services Act 2013 replaces the BAFIA, and the new law is in force from 30 June 2013;
- (b) However, perusing para. (f), the phrase “before the appointed date” had clearly allowed prosecution against a person under the repealed Act, where the offence alleged was committed before BAFIA was repealed;
- (c) The new Financial Services Act 2013 should not affect the previous operation of the BAFIA and hence it is in line with what has been stated under para. (l), which is also provided for under s. 30(1) of the Interpretation Acts 1948 and 1967 (*Bank Pertanian Malaysia Bhd v. Koperasi Permodalan Melayu Negeri Johor* [2015] 9 CLJ 1, Federal Court). The Financial Services Act 2013 is thus not applicable to the instant case, and therefore the contention on this ground is fallacious; and
- (d) The above position is supported by the decision of *Syed Ibrahim Syed Mohd & Ors v. Esso production Malaysia Incorporated* [2004] 1 CLJ 889 where the Court of Appeal cited *Maxwell v. Murphy* [1956-1957] 96 CLR 261 with approval as follows:

The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the past events. But, given rights and liabilities fixed by reference to past facts, matters or events, the law appointing or regulating the manner in which they are to be enforced or their enjoyment is to be secured by judicial remedy is not within the application of such a presumption. Changes made in practice and procedure are applied to proceedings to enforce rights and liabilities, or for that matter to vindicate an immunity or privilege, notwithstanding that before the change in the law was made the accrual or establishment of the rights, liabilities, immunity or privilege was complete and rested on events or transactions that were otherwise past and closed. The basis of the distinction was stated by Mellish LJ in *Republic of Costa Rica v. Erlanger*. “No suitor has any vested interest in the course of procedure, nor any right to complain, if during the litigation the procedure is changed, provided, of course, that no injustice is done.”

The distinction is clear enough in principle and its foundation in justice is apparent. But difficulties have always attended its application. In some cases they have been due to the discovery in the nature or context of the legislation or in its subject matter of indications, whether faint and conjectural or strong and persuasive, of a desire to cover situations already existing. In other cases the difficulty has been traceable to the inveterate tendency of English law to regard some matters as evidentiary or procedural which in reality must operate to impair or destroy rights in substance. Again, enactments in truth conferring or denying rights are not seldom expressed in terms of remedy. There is a tacit recognition of this in the manner in which Lord Penzance (then Wilde B) stated the rule in a passage that has been much quoted - "the rule applicable to cases of this sort is that, when a new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away. But where the enactment deals with procedure only, unless the contrary is expressed, the enactment applies to all actions whether commenced before or after the passing of the Act" - *Wright v. Hale* [1860] 6 H & N 227 at p. 232. [158 ER 94 at p. 96.

The rule or rules governing the presumption against the operation of new laws upon rights that have already accrued or immunities that have already been established or acquired must be reconciled or accommodated with the rule that the repeal of a provision makes it as if it had never been enacted. It is to this that the exceptions, already described, of the former rule are directed. In the case cited above, *Butcher v. Henderson* [1868] LR 3 QB 335, this is clearly put by Blackburn J as follows: "The maxim alike of law and justice is, '*Nova constitutio futuris formam imponere debet, non praeteritis*,' and therefore, **though when a statute is repealed, it is as to new matters as though it had never existed, yet as to transactions already completed under it, it still has full effect.**" (emphasis added)

Third Issue

[14] To the third issue in respect of no element of intention in s. 97(1) of BAFIA. I found the said section is based on strict liability principle as the duty of secrecy is an act concerning public interest as well as regulations to control behaviour. However, by referring to the case of *Gammon (Hong Kong) Ltd v. Attorney-General for Hong Kong* [1984] 2 All ER 503 and I quote as follows:

the law ... may be stated in the following propositions ... : (1) there is a presumption of law that *mens rea* is required before a person can be held guilty of a criminal offence; (2) the presumption is particularly strong where the offence is truly criminal in character; (3) the presumption ... can be displaced only if [the statute intends to eliminate the *mens rea* requirement] or [displacement is necessarily implied in] the statute; (4) [nevertheless] the ... presumption

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- A *can be displaced [only] where the statute is concerned with an issue of social concern, and public safety ...; (5) even where a statute is concerned with such an issue, the presumption of mens rea stands unless it can be shown that the creation of strict liability will be effective to promote the objectives of the statute by encouraging greater [public] vigilance to prevent the commission of the prohibited act.* (emphasis added)
- B (a) The above proposition supports the offence involving breach of secrecy which affects information of the customer in the bank. It is a social concern and it is appropriate to impose strict liability. For evaluating whether the law dispenses with *mens rea*, inference of *mens rea* could be invoked even though the offence itself may not expressly incorporate any *mens rea* terms (no intention element as raised by the appellants). This inference may be displaced in situations where the statutory offence dealt with issues of social concern or public safety; and
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- D (b) For a further deliberation, I refer to the case of *Mat Shuhaimi Shafiei v. PP* [2014] 5 CLJ 22 wherein an identical challenge was made as in the present case, and it was held as follows:
- E [90] In considering the “reasonableness test”, we took into account the scheme of the Sedition Act which is all encompassing. It criminalises speech and expression in different forms. Under the said Act, intention is irrelevant. As long as the speech or publication had a seditious tendency, an offence is committed. It is akin to an offence of strict liability. We reiterate the principles established by *Public Prosecutor v. Ooi Kee Saik & Ors* (*supra*) to the effect that the truth or falsity of the words uttered is immaterial and it is not a defence to a charge for sedition. And whether the words complained of could have the effect of producing or did in fact produce any of the consequences listed in s. 3(1)(a) to (f) of the Sedition Act is immaterial. (emphasis added)
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In this context, I am of the view that s. 97(1) of BAFIA is a strict liability offence and thus there would not have to be any need for the intention element to be expressly provided as argued by the appellants.

Conclusion

[15] For the foregoing reasons as above, I found there is no merit in this appeal filed by the appellants for referring the three questions of Constitutional issue as claimed, which had been dismissed by the Sessions Court Judge to be referred to this court. I also found the issues raised are not befitting to be treated as a special case to be transmitted to the Federal Court. The decision of the learned Sessions Court Judge is thus affirmed.

[16] Learned counsel for the appellants had applied for a stay of the execution of my order by indicating that the appellants had instructed for an appeal to be filed against my decision. Nevertheless, in my considered view, the criminal case should be disposed off with the least possible delay for the

purpose of public interest and justice since the matters are still fresh in the minds of the witnesses involved in the trial (*PP v. Tanggaah* [1972] 1 LNS 115; [1972] 1 MLJ 207; *PP v. Kamaruzaman Mahmud & Anor* [2006] 4 CLJ 792; [2007] 1 MLJ 750). In order to avoid inordinate delay, I hereby order this appeal be dismissed and this matter is remitted back to the Sessions Court for expeditious disposal. Further, the case is scheduled for mention in the lower court today to fix the hearing dates. Therefore, the application by the appellants for the stay of execution is dismissed.

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